

SENATOR WICKERSHAM: Senator Chambers, as I indicated earlier, that is a constitutional standard which has been moving, particularly in the U.S. Supreme Court. It is a standard that I could not give you any good definition of now. As you're aware there's a case that arose out of South Carolina where it was deemed to be a taking when zoning regulations were applied to some beachfront property that substantially impaired its value as developed property.

SENATOR CHAMBERS: Okay, not to cut you off because I want a follow-up and you'll get to pursue it. If we don't know what an actual taking of property means, how do we know what a potential taking is? In other words, if that item which is the basis for our definition is unknown, how can we talk about a potential with reference to that?

SENATOR WICKERSHAM: Senator,...

SENATOR CHAMBERS: Does this pile one vagueness on top of another one?

SENATOR WICKERSHAM: It...it.... Senator, is that your question?

SENATOR CHAMBERS: Yes.

SENATOR WICKERSHAM: Okay, I'm sorry. Senator, I believe it is necessary to insert the word "potential" because it would be very rare for a rule or regulation by its own adoption to constitute a taking of property. It is only as, usually anyway, as the rule or regulation is implemented then an actual taking occurs. So I believe the use of the word "potential" is necessary. I agree with you that we do not know in all circumstances what a taking of property is, because, as I indicated, that's a changing constitutional standard. But I believe it behooves the agencies, as they adopt or propose the adoption of rules and regulations, to make an analysis of that issue and to have a description of that issue in the rule-making process.

SENATOR CHAMBERS: Senator Wickersham, I understand what you said is your meaning and your intent, but we must look at how this language can be construed. Potential doesn't just refer to the rule whose implementation might result in an actual taking, but it also means the possibility of a taking through the